

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

Mason Johnson,)
Petitioner,) Civil Case No.: 5:17-cv-01026-JMC
v.)
Warden McFadden,)
Respondent.)

)

ORDER

Pro Se Petitioner Mason Johnson (“Petitioner”) is an inmate at Lieber Correctional Institution in the South Carolina Department of Corrections (“SCDC”). On April 20, 2017, Petitioner filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus challenging his convictions for second-degree burglary and grand larceny in 2010 at York County, South Carolina. (ECF No. 1.)

The Magistrate Judge’s Report and Recommendation, filed on May 10, 2017, determined that this is Petitioner’s second and successive petition because it raises claims against the validity of his 2010 conviction in York County that could have been brought in the first habeas corpus petition. (ECF No. 10 at 4.) The Magistrate Judge further found that Petitioner’s second petition should be dismissed as successive because he previously filed a habeas corpus petition based on his 2010 York County second-degree burglary and grand larceny convictions, and that petition was dismissed by the court “with prejudice” for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). (*Id.*)

(ECF No. 10 at 4.) The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation herein without a recitation.

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Petitioner was advised of his right to file objections to the Report and Recommendation (ECF No. 10 at 6.) However, Petitioner filed no objections to the Report and Recommendation. In the absence of objections to the Magistrate Judge’s Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party’s waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. (ECF No. 10.) Therefore, the court summarily dismisses Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus (ECF No. 1) without prejudice for failure to obtain authorization from the United States Court of Appeals for the Fourth Circuit prior to filing a successive habeas corpus petition.

IT IS SO ORDERED.



J. Michelle Childs
United States District Judge

June 1, 2017
Columbia, South Carolina